Criminal Appeal No. 533-DB of 1998.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision: November 26, 2007.

Ram Kishan **...**Appellant

VERSUS

State of Haryana **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Pawan Girdhar, Advocate,
for the appellant.

Mr. R.S. Kundu, Additional Advocate General, Haryana.

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MOHINDER PAL, J.

Ram Kishan (appellant) has preferred this appeal against the judgment of conviction dated September 22, 1998 and the sentence order dated September 26, 1998, passed by the learned Additional Sessions Judge-I, Narnaul, whereby he was

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convicted under Section 302 of the Indian Penal Code (hereinafter referred to as `the Code') and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for six months. Smt. Sukhdai, mother of the appellant, who was tried along with him for the offence punishable under Section 302 read with Section 120-B of the Code was, however, acquitted of the charge.

As per facts of this case, complainant Banwari Lal (P.W.10), is the cousin of Machhander, who has two sons, namely, Ram Dutt and Ram Kishan (appellant). Both Ram Dutt and Ram Kishan were taxi drivers at Delhi. Bhateri (deceased) was the wife of Ram Dutt whereas Ashok (deceased), aged seven/eight years and Pawan (deceased), aged ten years, were the sons of Ram Dutt. All three of them were residing in a separate house from Machhander and his wife Smt.Sukhdai (acquitted accused). Munesh (P.W.1) is the wife of appellant Ram Kishan and she used to reside in the village with Machhander and Smt.Sukhdai. Munesh is the cousin of Bhateri (deceased) and her marriage with appellant Ram Kishan was arranged by Bhateri a few years prior to the occurrence.

On April 11, 1997, at about 7.30 or 8 P.M, Munesh (P.W.1) asked her husband Ram Kishan (appellant) to bring vegetables and, therefore, he went out of the house. His mother Smt.Sukhdai followed him and bolted the house from

outside. At that time, complainant Banwari Lal was also coming back to his house from the fields and when he was at a distance of about one killa from the house of appellant Ram Kishan, he heard noise. He went near the house of Ram Kishan, where he saw that Ram Kishan, armed with a spade, was causing injuries to Bhateri near the gate of his house. Bhateri was lying on the ground. Ram Kishan caused injuries on her head and back side of her left ear. At that time, Banwari Lal (P.W.10) also saw Ram Kishan (appellant) causing injuries on the head of Ashok (deceased) with the same spade because Ashok had seen the appellant causing injuries to Bhateri. Banwari Lal raised an alarm, whereupon appellant Ram Kishan went away along with spade towards the fields. Pawan (deceased) had also seen the occurrence, but on seeing his mother Bhateri and brother Ashok smeared with blood, he ran towards the fields out of fear of Ram Kishan. On hearing the alarm raised by Banwari Lal, Machhander, Sujan Singh and Kanwar Singh, Chaukidar of Village Mulodi, reached to the spot. Bhateri had died at the spot. Ashok was struggling with life. He was taken to General Hospital, Narnaul, by Machhander and Banwari Lal, where he was declared dead. On receiving information about the arrival of dead body of Ashok in the hospital, Sub Inspector Raja Ram (P.W.14) went to General Hospital, Narnaul and recorded statement of Banwari Lal (Exhibit P.F/1), on the basis of which present First Information Report (Exhibit P.F) was registered.

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Thereafter, Sub Inspector Raja Ram (P.W.14) went to the place of occurrence and conducted inquest proceedings on the dead body of Bhateri. He then went to the place where the dead body of Pawan was lying and conducted inquest proceedings. He then deputed Constables to watch the dead bodies of Bhateri and Pawan and himself came to General Hospital, Narnaul, where he carried out proceedings under Section 174 of the Code of Criminal Procedure on the dead body of Ashok.

After completion of investigation and due formalities, challan against the accused was presented.

Vide order dated September 03, 1997, the trial Court framed charge under Section 302 of the Code against Ram Kishan (appellant) for causing the murders of Bhateri, Ashok and Pawan. He did not plead guilty to the charge and claimed trial.

At the trial, the prosecution examined Smt. Munesh, wife of appellant Ram Kishan (P.W.1), Mr.M.L. Bansal, Judicial Magistrate Ist Class, (Retd.), Narnaul, who had recorded statement of Smt.Munesh under Section 164 of the Code of Criminal Procedure (P.W.2), Dharampal, Constable (P.W.3), Karan Singh, Constable (P.W.4), Virender Singh (P.W.5), Karan Singh, Assistant Sub Inspector (P.W.6), Babu Lal, Sub Inspector (P.W.7), Sushil Kumar, Constable (P.W.8), Brij Lal, who had seen the appellant causing hurt to Pawan (deceased) with spade

(P.W.9), Banwari Lal complainant (P.W.10), Sujjan Singh (P.W.11), Ram Dutt (P.W.12), Dr. Hement Kumar, who conducted post mortem examination on the dead bodies of Bhateri, Ashok and Pawan (P.W.13) and Raja Ram, Sub Inspector, who investigated the case (P.W.14).

Thereafter, statement of Ram Kishan (appellant) was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the prosecution allegations and pleaded innocence. He stated that he was at Delhi at the relevant time where he used to ply taxi. Some unknown person or persons might have committed the murders of Pawan Kumar, Ashok Kumar and Bhateri and he was falsely involved in the case by the police. He further stated that he had strained relations with his wife Munesh (P.W.1) and, therefore, out of grudge she had made a false statement against him alleging herself to be an eye-witness of the occurrence. Actually, she was not an eye-witness of the occurrence. No evidence was led in defence.

We have heard Mr. Pawan Girdhar, learned counsel for the appellant, and Mr. R.S. Kundu, learned Additional Advocate General, Haryana, and have gone through the records of the case with their help.

In this case, statement (Exhibit P.B) of Munesh wife of appellant Ram Kishan and cousin sister of Bhateri (deceased), under Section 164 of the Code of Criminal Procedure, was recorded by P.W.2 Mr.M.L. Bansal, the then Judicial Magistrate

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Ist Class, Narnaul, on April 19, 1997. The occurrence had taken place on April 11, 1997. In her statement (Exhibit P.B), she stated that April 11, 1997, in the morning hours after preparing food, she and her mother-in-law went to fields. After the sun set, they both returned to their home. On reaching there, she started cutting firewood and asked Ram Kishan to bring vegetables. It was about 7.30 P.M. Her mother -in- law Smt.Sukhdai also went outside the house. She bolted the door from outside. In the meantime, she heard noise ` Bachao, Bachao'. Therefore, she rushed to the door, but the door was shut. After knocking the door, she peeped through the wall. Her sister Bhateri (deceased) was being given beating by her husband Ram Kishan with a `Kassi' (spade) on her head. Immediately thereafter, Ram Kishan rushed towards Ashok (deceased) . He also gave `Kassi' blows to him. She reiterated her statement while deposing in Court as P.W.1. Thus, it is a case where a wife had given an ocular account of murders against her husband and that too while residing in her matrimonial home.

Brij Lal (P.W.9) has deposed that on April 11, 1997, at about 7.P.M/7.30 P.M he was coming back from his fields. Radhey Shyam was following him. When he reached near the fields of Jagmal, he heard the cries of a child from a distance of fifteen/twenty paces. Pawan (deceased) was the child who was crying. Ram Kishan (appellant) was causing hurt to Pawan with a

spade. He raised noise and appellant Ram Kishan fled away from there with the spade. He went near the place of occurrence and saw Pawan lying there dead. He came to know in the night that Bhateri and Ashok had also been murdered by appellant Ram Kishan. He is resident of the same village where the appellant and his family resides. He is an independent witness. He had no axe to grind against the appellant. Nothing could be extracted from his cross-examination which could raise a doubt about the truthfulness of his statement.

Sub Inspector Raja Ram (P.W.14), who had investigated the case, interrogated Ram Kishan (appellant) on May 06, 1977. Upon interrogation, he suffered disclosure statement (Exhibit P.K) to the effect that he had kept concealed a `Kassi' (spade/`Fawari') and a Pant in his `Gher' underneath the fuel material and he could get the same recovered. His statement was reduced into writing which was attested by Ram Dutt (P.W.12) and Kanwar Singh. In pursuance of his disclosure statement, the appellant got recovered spade (Exhibit P.13) and Pant (Exhibit P.14) from the place of concealment. Spade (Exhibit P.13) and Pant (Exhibit P.14) along with other articles were sent to the Forensic Science Laboratory, Madhuban (Karnal) and vide report Exhibit P.E/2, blood was detected on spade and pant. No fault in the investigation could be pointed out by the learned counsel for the appellant which could put the Court on its guard in any manner.

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Dr.Hement Kumar (P.W.13) had conducted post mortem examinations on the dead bodies of Pawan, Ashok and Bhateri. On the dead body of Pawan, two incised wounds of the size of 10 cms x 5 cms x 4 cms and 6 cms x 4 cms x 4 cms on his head, one lacerated wound of 3 cms x .5cm above the right eye-brow and one linear abrasion of 9 cms on the lateral side of mid of right arm were detected. In the opinion of the Doctor, the cause of death of Pawan was shock and haemorrhage as a result of the above -mentioned injuries. All the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature.

While conducting post mortem examination on the dead body of Ashok, Dr.Hement Kumar (P.W.1) observed one incised wound of the size of 10 cms x 5 cms x 5 cms on the right side of his forehead. Two more incised wounds of the size of 7 cms x 3 cms x 3 cms horizontally placed and 6 cms x 2.5 cms x 3 cms obliquely placed were noticed on the left parietal bone exposing fractured bone and underlying injured brain matter. He opined that the cause of death of Ashok was shock and haemorrhage as a result of these injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Three incised wounds on the occipital area and ear and one incised wound on left palm between middle and ring finger of Bhateri were detected by Dr. Hement Kumar (P.W.1)

while conducting her post mortem examination. The cause of death was shock and haemorrhage as a result of these injuries, which were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

In this case, despite the fact that Banwari Lal (P.W.10), who is an uncle of the appellant and the author of the First Information Report, had resiled from his earlier statement and was cross-examined by the Public Prosecutor, there is overwhelming evidence, direct as well as circumstantial, as discussed above, in support of the prosecution case. The medical evidence fully supports the ocular account given by Smt.Munesh (P.W.1) and Brij Lal (P.W.9). Even Banwari Lal (P.W.10), when cross-examined by the Public Prosecutor, admitted about the murders on the relevant date, time and place. He has also admitted that he informed about the occurrence to the police. It is well-settled that whole statement of a hostile witness shall not be thrown out simply on the ground that he has been declared hostile. In other words, the testimony of a hostile witness does not become meaningless. The Court can take into consideration the testimony of a hostile witness which is supported by other evidence and which is necessary for the just decision of the case. In the presence of the statements of eye witnesses Smt. Munesh (P.W.1) and Brij Lal (P.W.9) and Sub Inspector Raja Ram, Investigating Officer (P.W.14), there can be no hesitation to hold that Banwari Lal (P.W.10) was an eye-witness

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of the occurrence and he resiled from his statement (Exhibit P.F/1) on having been won over by the defence.

In view of what has been discussed above, we find no infirmity in the impugned judgment of conviction and the sentence order. Consequently, this appeal is hereby dismissed being without any merit.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 26, 2007.

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